IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPLICATION NO. 5657 OF 2004.
IN
CRIMINAL APPEAL NO.1515 OF 2004.

Shamshuddin alias Khaja
Micaso Nadaf ..Applicant.

vs.

The State of Maharashtra. ..Respondent.

Shri Ganesh Gole for the applicant.
Shri D.P. Adsule, A.P.P. for the State.

CORAM: V.M.KANADE,J.
DATED: 12-1-2005.

ORAL ORDER:

1. Heard learned Counsel appearing on behalf of the applicant and the learned A.P.P. for the State.

2. The applicant is convicted by the trial Court for having committed offence under section 306 of the Indian Penal Code. The prosecution case is that the applicant had visited the house of the deceased-Bismilla. The applicant was her brother-in-law. According to the complainant, the applicant had told her to withdraw the case which was filed by her against her father-in-law. On the next day, the complainant poured kerosene on herself and set herself on fire. Dying declaration was recorded. Thereafter she succumbed to burn injuries and case was filed

against the accused under section 306, 498-A and 304 of the Indian Penal Code .

3. The trial Court acquitted the accused of the offences under sections 498-A and 304-B r/w 34 of the I.P.C. Applicant is however, convicted for the offence under section 306 of the I.P.C. and sentenced to suffer Rigorous Imprisonment for 5 years. On perusal of dying declaration, it appears that the complainant-Bismilla had stated that she poured kerosene on herself in a fit of anger and prima facie, there is no evidence to show that there was harassment for the purpose of making unlawful demands for any property or valuable security. The applicant is staying separately in village Moroch, Taluka Hatkangale, whereas deceased Bismilla was staying at Jaisingpur, Taluka Shirala. From these circumstances, prima facie, it cannot be said that offence under section 306 of I.P.C. has been made out.

4. In these circumstances, the applicant is directed to be released on bail in the sum of Rs. 5,000/- (five thousand) with one or two sureties in the like amount.